DJH

267 NLRB No. 128

D--1082
New York, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SUPERIOR MODEL FORM CORPORATION

and

Case 2--CA--19320

BONNAZ, EMBROIDERIES, TUCKING, PLEATING AND ALLIED CRAFTS UNION, LOCAL 66, INTERNATIONAL LADIES' GARMENT WORKERS' UNION

DECISION AND ORDER

Upon a charge filed on 22 December 1982 by Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers' Union, herein called the Union, and duly served on Superior Model Form Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 2, issued a complaint on 20 January 1983 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 28 October 1982, following a Board

election in Case 2--RC--19351, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about 7 December 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On 28 January 1983 Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 10 February 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 17 February 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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[1] Official notice is taken of the record in the representation proceeding, Case 2--RC--19351, as the term ''record'' is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits the Union's request to bargain, but in substance attacks the validity of the Union's certification on the basis of its objections to the election in the underlying representation proceeding. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

A review of the record herein, including the record in Case 2--RC--19351, discloses that on 20 August 1982 the Regional Director issued a Decision and Direction of Election in a unit which he found appropriate. Thereafter, Respondent filed a ''Motion to Reconsider Decision'' with the Regional Director, asserting that Local 2682, United Brotherhood of Carpenters and Joiners of America, AFL--CIO (the Intervenor), should not appear on the election ballot and asserting that the eligibility of certain employees on layoff status had not been addressed in the decision. This motion was denied on 3 September 1982. Respondent filed a timely request for review. The Board denied the request for review by mailgram on 22 September 1982 (telephonically communicated to the Regional Director on 20 September 1982, and relayed to Respondent prior to the start of the secret-ballot election).

On 21 September 1982, pursuant to the Direction of Election, an election was held among the employees in the unit found appropriate. The tally of ballots showed that, of approximately

four eligible voters, three cast ballots in favor of, and one against, the Union; there were no challenged ballots. On 28 September 1982 Respondent filed timely objections to conduct affecting the results of the election, alleging that the Board agent conducting the election refused, in violation of Section 102.69(a) of the Board's Rules and Regulations, to impound the ballots of the four voters challenged by Respondent. Following an investigation, the Regional Director, on 28 October 1982, after determining that no hearing upon the objections was warranted, issued a Supplemental Decision and Certification of Representative, in which he overruled Respondent's objections and certified the Union as the representative of the employees in the unit found appropriate. Thereafter, Respondent filed a timely request for review of the Regional Director's Supplemental Decision and Certification of Representative. On 30 November 1982 the Board, by mailgram, denied Respondent's request for review.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege

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[2] See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.[3]

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Superior Model Form Corporation, a New York corporation, with an office and place of business located at 545 Eighth Avenue, New York, New York, is engaged in the manufacture of model forms, shields, and shoulder pads for the apparel industry. Annually, Respondent purchases and receives at its New York, New York, facility goods, products, and materials valued in excess of $50,000 directly from suppliers located outside the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

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[3] Chairman Dotson did not participate in the underlying representation proceeding.

II. The Labor Organization Involved

Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers' Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees involved in the production of shields and shoulder pads employed by Respondent at Superior Model Form Corporation, excluding all other employees, guards and supervisors as defined in the Act.

2. The certification

On 21 September 1982 a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 2, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on 28 October 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 6 December 1982, and at all times thereafter, the Union has requested Respondent to bargain

collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 7 December 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to date to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 7 December 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the

appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Superior Model Form Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers' Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees involved in the production of shields and shoulders pads employed by Respondent at Superior Model Form Corporation, excluding all other employees, guards and supervisors as defined in the Act,

constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 28 October 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 7 December 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and(7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Superior Model Form Corporation, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers' Union, as

the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time employees involved in the production of shields and shoulder pads employed by Respondent at Superior Model Form Corporation, excluding all other employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at Superior Model Form Corporation, 545 Eight Avenue, New York, New York, copies of the attached notice marked ''Appendix.''[4] Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all

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[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. 26 August 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Bonnaz, Embroideries, Tucking, Pleating and Allied Crafts Union, Local 66, International Ladies' Garment Workers' Union, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time employees involved in the production of shields and shoulder pads employed by us at Superior Model Form Corporation, excluding all other employees, guards and supervisors as defined in the Act.

SUPERIOR MODEL FORM CORPORATION

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Jacob K. Javits Federal Building, Room 3614, 26 Federal Plaza, New York, New York 10278, Telephone 212--264--0360.